IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

SA.No. 314 of 2001()

AS.33/1993 of II ADDITIONAL DISTRICT COURT, THRISSUR
OS.686/1989 of I ADDL.SUB COURT, THRISSUR
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APPELLANT: APPELLANT:PLAINTIFF:

MATHAI,
S/O.THARAYIL PUTHUR LAZAR,
THRIKKANAPATHIYARAM DESOM,
CHITTANDA VILLAGE,
THALAPPILLY TALUK.

BY ADV. SRI.N.P.SAMUEL
SRI.V.R.REJITHKUMAR

RESPONDENTS: RESPONDENTS:DEFENDANTS:
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1. **UNNIKRISHNAN,**
S/O.PATTARE RAMAN,
THRIKKANAPATHIYARAM DESOM,
CHITTANDA VILLAGE, TALAPPILLY TALUK,
THRISSUR DISTRICT.

2. **GIRIJA,**
W/O.PATTARE UNNIKRISHNAN,
THRIKKANAPATHIYARAM DESOM,
CHITTANDA VILLAGE, TALAPPILLY TALUK,
THRISSUR DISTRICT.

3. **AMMU,**
W/O.KADAMKULAM GOVINDAN,
THRIKANAPATHIYARAM DESOM,
CHITTANDA VILLAGE, TALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.KRISHNAKUMAR MANGOT for R1 & R2

THIS SECOND APPEAL HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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S.A.No. 314 OF 2001

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DATED THIS THE 10th DAY OF OCTOBER, 2007

JUDGMENT

Plaintiff in O.S.686 of 1989 on the file of Sub Court, Thrissur is the appellant. Defendants are respondents. Appellant instituted the suit seeking a decree for permanent prohibitory injunction contending that plaint schedule property was purchased by appellant as per Ext.A1 assignment deed dated 10.1.1986 and since then he has been in possession of the property and it lies in the shape of a tail from Chittanda-Thrikkanapathiyaram road from south to north and then east-west and then south-north and ends in the property of appellant. It was contended that respondents 1 and 2 are residing on the western side of plaint schedule property and respondents 2 and 3 are residing on the northern side and there is a pathway having three links width lying on the east and north end and parallel to the plaint schedule property for ingress and egress to the property of respondents and there are clear boundaries on all sides to demarcate the pathway and respondents have no right over the plaint schedule property. It was contended that O.S.165 of 1984 was filed by appellant against first respondent

and his father and in that suit they contended that there was no pathway in existence and during the pendency of the suit, properties were measured and it was found that the property belonged to the father of first respondent and there is no pathway through that property and thereafter plaint schedule property was purchased by appellant leaving a pathway having three links width as per Ext.A1 assignment deed and appellant has been in exclusive possession and enjoyment of the property since then and respondents are attempting to trespass into the plaint schedule property and they have no right to do so and so they are to be restrained by a decree for permanent prohibitory injunction.

2. Respondents 1 and 2 in their joint written statement contended that father of first respondent had no exclusive right to assign the plaint schedule property to appellant and property belonged to Ayyappan, father of Raman, who is the father of first respondent and on the death of Ayyappan, Raman got the property alloted to him as per partition deed No. 312/1954 and first respondent is the eldest son of Raman and plaint schedule property is in joint possession of first respondent and others and

there is no demarcating boundary separating the property and the pathway and plaint schedule property with a three links width of pathway is lying contiguously and the same has been used by respondents and others of the locality as a pathway and disputing the identity of plaint schedule property and appellant is not entitled to the decree sought for.

3. Respondents 3 and 4 also filed a similar written statement and contended that appellant is not entitled to the decree as against them.

4. Learned Munsiff, on the evidence of PWs 1 & 2, DW1 and Exts.A1 to A6, dismissed the suit holding that the identity of the plaint schedule property was not established, though right of appellant under Ext.A1 was not found against. Appellant challenged the decree and judgment before District Court, Thrissur in A.S.33 of 1993. Learned Additional District Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

5. Learned counsel appearing for the appellant was heard. The argument of the learned counsel is that plaint schedule

property was purchased from first respondent under Ext.A1 sale deed and boundaries are specifically shown in Ext.A1 and it is the same boundary of the plaint schedule property and in such circumstances, courts below should not have non-suited appellant for want of identification of the property. It was argued that the pathway and the plaint schedule property were separately demarcated and in such circumstances, a decree as sought for should have been granted.

6. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. A decree for permanent prohibitory injunction could be granted only in respect of a definite and identifiable property. Even though respondents, in the written statement, disputed the identity, appellant did not take out a Commission to identify the plaint schedule property and demarcate the same in accordance with the description shown in Ext.A1. Though it was contended that plaint schedule property and the pathway are separated by demarcating boundary, that aspect was also disputed by respondents and no acceptable evidence was adduced. It is in such circumstances, courts below found that appellant is not

entitled to the decree sought for. As the identity of the plaint schedule property was not established, the finding of courts below is correct. In such circumstances, appeal is dismissed. It is made clear that appellant is entitled to file a suit for declaration of title after proper identification of the property.

M.SASIDHARAN NAMBIAR, JUDGE

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